UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

DANZA HONEYBLUE and JON PARK, on behalf of all those similarly situated, Plaintiffs, -against- CHATTEM, INC., Defendant.	Index No. Case No. **PLAINTIFFS' AMENDED AND CONSOLIDATED CLASS ACTION COMPLAINT**

Plaintiffs, through their counsel, individually and on behalf of all those similarly situated, for their Amended and Consolidated Class Action Complaint ("Amended Complaint") against Defendant, allege as follows:

NATURE OF THE CLAIM

1. Plaintiffs bring this action individually and on behalf of a class of all persons who have purchased and/or consumed the over-the-counter appetite suppressant, Dexatrim, containing phenylpropanolamine ("PPA").

2. Plaintiffs bring this action pursuant to Rule 23 of the Federal Rules of Civil Procedure, on their own behalf and as representatives of a class of all citizens or residents of the United States who have purchased and/or consumed Dexatrim diet pills containing PPA (the "Class"), or their estates, administrators or other legal representatives, heirs or beneficiaries, and any other person asserting the right to sue independently or derivatively.

3. Plaintiffs bring this action individually and as Class representatives to recover damages, restitution, refunds, loss of consortium, and/or for equitable, injunctive and declaratory relief against Defendant.

4. Defendant Chattem, Inc. ("Chattem") placed Dexatrim into the stream of worldwide commerce and interstate commerce in the United States. Defendant manufactured, marketed and sold Dexatrim appetite suppressants containing PPA. Defendant knew or should have known of the health risks and adverse effects of its product containing PPA. Defendant failed to adequately inform Plaintiffs, Class Members and the public and have, in fact, conspired to misrepresent and/or conceal and did in fact misrepresent and/or conceal information regarding the risks and effects of its product.

5. As a direct and proximate result of the defective products placed into the stream of commerce by Defendant, Plaintiffs and members of the Class suffered and continue to suffer severe injury and disability, including physical and mental pain and suffering, and will continue to experience such injuries in the indefinite future.

6. Plaintiffs and members of the Class have incurred significant medical, hospital, rehabilitative, and/or pharmaceutical expense and/or lost wages and will continue to incur such expenses and losses in the future.

PARTIES

7. Plaintiff Danza Honeyblue, is a resident of Essex County, New Jersey. On or about April 6, 1999, Danza Honeyblue took Dexatrim and subsequently suffered a hemorrhagic stroke.

8. Plaintiff Jon Park is a resident of San Bernardino County, California. On or about December 19, 2000, Jon Park took Dexatrim and subsequently suffered an ischemic stroke.

9. Defendant Chattem is a Tennessee corporation and has its principal place of business in Chattanooga, Tennessee and at all times relevant hereto, manufactured, marketed, distributed, warranted and/or sold its products containing PPA, including Dexatrim, in this state and throughout the United States.

JURISDICTION AND VENUE

10. The Court has jurisdiction of this action pursuant to 28 U.S.C. § 1332 in that the citizenship of the parties is diverse and the amount in controversy, exclusive of interests and costs, exceeds $75,000. This Court has personal jurisdiction over all Defendants.

11. Venue is proper in this Court. At all times material to this lawsuit, Defendants have offered, distributed, marketed and/or sold Dexatrim in the State of Washington.

FRAUDULENT CONCEALMENT

12. Throughout the time period that Defendant manufactured, offered, distributed, marketed and/or sold Dexatrim containing PPA, it was aware of the health risks and adverse health effects of PPA. Defendant has concealed this information from Plaintiffs and Members of the Class. Plaintiffs and Members of the Class did not discover and could not have discovered this information absent Defendant's disclosure.

13. Therefore, the running of any statute of limitations has been suspended with respect to the claims alleged herein by virtue of the Defendant's fraudulent concealment.

CLASS ACTION ALLEGATIONS

14. This case is brought as a class action pursuant to the provisions of Rule 23 of the Federal Rules of Civil Procedure. Plaintiffs seek certification of the following general Class:

> All Dexatrim® Product Users who sustained bodily injury on or after December 21, 1998 allegedly as a result of his or her ingestion of a Dexatrim® Product, and their associated Derivative Claimants and Representative Claimants. The Class shall expressly exclude any person or entity that entered into a settlement with Chattem (which included a release) related to claims arising out of the use of a Dexatrim® Product. The Class shall also expressly exclude any individual (and their associated Derivative Claimants and Representative Claimants) against whom any court has entered judgment or dismissal with prejudice in an action related to a Dexatrim® Product on or before the Preliminary Approval Date, regardless of whether such judgment or dismissal is the subject of a motion for reconsideration or appeal.

This case is properly brought as a class action pursuant to Rule 23, for the reasons set forth in the following paragraphs.

15. Plaintiff Danza Honeyblue brings this action as a representative of and on behalf of the general Class described in Paragraph 14. On or about April 6, 1999, Danza Honeyblue ingested Dexatrim containing PPA and suffered a hemorrhagic stroke. As a result of her ingestion of Dexatrim, Ms. Honeyblue suffered and continues to suffer from memory loss, impaired speech, cognitive impairment, difficulty walking, body weakness, and very limited use of her right hand. As a result of her injuries, Ms. Honeyblue is now unable to work and is fully disabled.

16. Plaintiff Jon Park brings this action as a representative of and on behalf of the general Class described in Paragraph 14. On or about December 19, 2000, Mr. Park ingested Dexatrim containing PPA and suffered a basal ganglia lacunar ischemic stroke. As a result of his injury, Mr. Park suffered and continues to suffer from difficulty walking, garbled speech, and fatigue. Mr. Park is unable to work and was awarded Social Security Disability payments as a result of his stroke.

17. Plaintiffs are Members of the Class described herein. Plaintiffs purchased and/or consumed Dexatrim containing PPA manufactured, offered, distributed marketed and/or sold by Defendant.

18. Thousands of consumers have purchased Dexatrim containing PPA which was manufactured, offered, distributed, marketed and/or sold by Defendant, and are Members of the Class defined above. Accordingly, membership in the Class is so numerous that joinder of all Class Members is impracticable.

19. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. This action presents no difficulty that would impede its management by the Court as a class action.

20. Plaintiffs' claims are typical of the claims of the Class because they and all the Class Members sustained damages which arose from Defendant's wrongful conduct complained of herein.

21. There are numerous and substantial questions of law and fact common to all Class Members which control this litigation and which predominate over any individual issues. Common questions include the following:

a. Whether consumption of Dexatrim containing PPA results in increased health risks or has other adverse effects;

b. Whether Defendant knew or should have known of the health risks and adverse effects of Dexatrim containing PPA;

c. Whether Defendant breached implied warranties to Plaintiffs and Class Members in the sale of Dexatrim containing PPA;

d. Whether Defendant had a duty to disclose or to warn Plaintiffs and Class Members of the health risks and adverse effects of Dexatrim containing PPA;

e. Whether Defendant adequately warned Plaintiffs and Class Members of the health risks and adverse effects of Dexatrim containing PPA;

f. Whether the Defendant misrepresented or concealed material facts regarding the health risks of Dexatrim containing PPA;

g. Whether Defendant negligently, recklessly, knowingly, willfully or intentionally misrepresented the health risks and adverse effects of Dexatrim containing PPA;

h. Whether Defendant conspired to misrepresent and/or conceal material facts regarding the adverse health effects and safety of Dexatrim containing PPA;

i. Whether Defendant's conduct violated state deceptive trade practice or consumer protection laws;

j. Whether Dexatrim containing PPA is unreasonably dangerous;

k. Whether Defendant is strictly liable to those injured as a result of its conduct;

l. What is the proper mechanism for assessing and awarding damages and administering other relief, including relief to reduce the threat of future harm.

22. The claims of the Plaintiffs are typical of the claims of the Class.

23. Plaintiffs will fairly and adequately represent and protect the interests of the members of the Class. Plaintiffs have no claims antagonistic to those of the Class. Plaintiffs have retained counsel competent and experienced in complex class actions, toxic tort and products liability litigation. Class counsel will consist of Seeger Weiss LLP, Ashcraft & Gerel, Early, Ludwick & Sweeney, LLC, and Lopez, Hodes, Restaino, Milman & Skikos.

24. Class certification pursuant to Rule 23(b)(3) is appropriate because common issues of law and fact relative to the effect of the Defendant's course of dealing are common to the members of the Class and said questions of law or fact predominate over any questions affecting only individual members, thereby rendering the class action superior to other available methods for the fair and efficient adjudication of this controversy.

25. Plaintiffs and Class Members have suffered irreparable harm and damage as a result of the Defendant's wrongful conduct. Absent a class action to force Defendant to take responsibility for the adverse health effects of Dexatrim containing PPA, Plaintiffs and Class Members will have no recourse or recompense and Defendant will retain vast amounts of profits gained by the manufacture, distribution and sale of Dexatrim containing PPA gained at the risk of the health, safety and welfare of Plaintiffs and Class Members.

FACTUAL ALLEGATIONS

26. At all relevant times hereto, Defendant was designer, manufacturer, marketer, advertiser, distributor, and seller of a non-prescription, over-the-counter appetite suppressant, Dexatrim, which contained PPA as an active ingredient. This PPA product was purposefully and regularly distributed, marketed, advertised, and sold

throughout the United States.

27. PPA is a sympathomimetic amine similar in structure and function to amphetamine and ephedrine. A sympathomimetic drug such as PPA, *inter alia*, increases arterial blood pressure.

28. For decades, the scientific and medical communities have known that human consumption of amphetamines and other sympathomimetic drugs can cause serious, life threatening, adverse health effects, including damage to the cardiovascular and neurological systems. Known effects associated with the use of PPA include hypertension, myocardial injury, headache, hypertensive encephalopathy, agitation, psychosis, hemorrhagic and ischemic cerebrovascular incidents, atrial and ventricular brady and tachydysrythmias, cardiopulmonary arrest, seizures, bowel ischemia and infarction, and cerebral arteritis. Defendant, as a manufacturer of pharmaceutical products, knew of the dangers associated with the consumption of sympathomimetic drugs, such as amphetamines and PPA, and as such was fully aware of the dangers posed by the consumption of PPA. Despite this knowledge, for years, Defendant used PPA in Dexatrim. Defendant marketed and advertised its product to the general public and to the medical community as being safe and effective for their stated purposes.

PPA's FDA History

29. PPA was first synthesized in 1910 and was used in the early 1930s as an alternative to ephedrine in maintaining blood pressure after surgery. The ability of PPA to raise arterial blood pressure is primarily due to the action of PPA on constricting blood vessels via direct and, possibly, indirect activation of alpha-1-adrenoceptors.

30. PPA, until recently, has been used in two primary over-the-counter (hereinafter "OTC") markets: (i) as a decongestant in cough and cold products and (ii) as an appetite suppressant in diet pills. PPA was first used as a decongestant in 1936. PPA produces vasoconstriction of the mucosal blood vessels to alleviate congestion. PPA was first used as an appetite suppressant in 1972.

31. In 1938, the Food and Drug Administration ("FDA") was created as part of the enactment of the Federal Food, Drug and Cosmetic Act of 1938 (the "Act"), 52 Stat. 1040 (codified as amended at 21 U.S.C. § § 301 et seq. (2000)). Under the Act, new drugs required the approval of the FDA. Existing drugs were "grandfathered" under the Act and thus were exempted from the application and testing requirements of new drugs. No proof of safety was required for grandfathered drugs. Having been on the market as a decongestant since 1936, PPA was exempt from the new drug approval process.

32. In 1962, the Drug Amendments to the Act, Pub. L. No. 87-781, 76 Stat. 780, required proof of effectiveness for all new drugs, including those approved between 1938 and 1962. Those drugs introduced before 1938, which had been drugs previously "grandfathered" under the Act, such as PPA, continued their exempt status.

33. In 1972, the FDA began to review OTC drugs for classification. The FDA classifications for OTC drugs are Category I (safe and effective), Category II (not safe and effective), or Category III (insufficient data to assess safety).

34. As an OTC product marketed before 1972, PPA was allowed to continue on the market until a "final monograph" relating to the drug's category became effective. The FDA never finalized a monograph for PPA because of concerns about reports of hemorrhagic stroke associated with its ingestion. Additionally, PPA was never classified by the FDA as a Category I (safe and effective) OTC drug.

35. In 1999, more than 4.5 billion doses of PPA were sold in products such as Dexatrim (hereinafter referred to as "PPA products").

PPA's Association With Risk of Stroke

36. For more than twenty years, the OTC pharmaceutical industry, including Defendant, has been aware of reports of stroke associated with the use of PPA. Furthermore, published reports of PPA use associated with hypertension (increased blood pressure) date back over thirty years.

37. Since 1979, there have been over 30 case reports published in respected medical journals identifying the link between PPA ingestion and stroke. A number of these authors, medical authorities, and medical "watch-dog" agencies, such as Public Citizen, called for the removal of PPA from the OTC market.

38. As early as 1979, an article in the Medical Journal of Australia noted a case of hypertension and cerebral hemorrhage after PPA product use.

39. In the mid-1980s, a study by O'Neill and Van de Carr (FDA report, 1984; cited in Tsong, 2000) postulated a relationship between PPA ingestion and hemorrhagic stroke.

40. In 1981, an editorial in the American Journal of Medicine and the consumer group Public Citizen expressly recommended against PPA use in the OTC market because of safety risks, especially those related to hemorrhagic stroke.

41. After determining that PPA raises blood pressure in 1983, the FDA met with industry officials to discuss the need for more data to evaluate the safety concerns surrounding PPA and life threatening adverse reactions including hypertension and hemorrhagic stroke.

42. In 1984, the FDA banned the sale of products containing a combination of PPA and caffeine due to safety and health concerns.

43. In 1985, the FDA issued a tentative final monograph for classifying OTC nasal decongestants. PPA, however, was omitted from the monograph due to safety concerns.

44. In 1990, a review article of 142 case reports concluded that the most serious adverse reactions (stroke and seizure) were caused by PPA Products.

45. Also in 1990, a subcommittee of the U. S. House of Representatives Small Business Committee held hearings on diet drugs containing PPA. At the hearings, several scientific witnesses and one witness from the National Society of Physicians called for the removal of PPA from the OTC market because of safety and health

concerns. After the hearings, the subcommittee's chairman, U. S. Representative Ron Wyden, wrote to the FDA expressing his concern about PPA. Representative Wyden's letter noted that an epidemiological study had demonstrated that PPA preparations lead all other OTC products in the number of serious and fatal adverse effects in people under 29 years of age, as well as in the number of contacts with poison control centers each year.

46. Between 1969 and 1991, 29 cases of cerebro-vascular incidents associates with PPA use were reported to the FDA through its spontaneous adverse event reporting system. Of these 29 reports, 22 involved strokes associated with PPA use (16 appetite suppressant cases and 6 "cold and cough" cases). Of these strokes, 55% occurred after just one dose of the PPA Product.

47. In 1991, H. M. Jolson produced an internal report for the FDA that examined the reports of cerebro-vascular stroke in the FDA spontaneous reporting system for PPA versus all other drugs for women for the period of 1969-1991. Her analysis indicated that cerebro-vascular stroke was the most common event for PPA-containing products; that such events were also evident in cough-cold preparations; and that such events were often associated with first use of PPA Products. Despite the existence of this information, consumers were not being timely or adequately warned by the pharmaceutical industry about the known association between PPA and stroke.

48. In 1991, the FDA held a public meeting to address the issues regarding safety and efficacy of PPA before publishing a final monograph for the drug. Reports of stroke associated with PPA use were raised at the meeting.

49. Between 1991 and 2000, the FDA received an additional 22 reports of strokes associated with PPA use (19 "cold and cough" cases, 3 appetite suppressant cases). Four of these consumers died from their injuries.

50. Thus, by the time Plaintiffs ingested Dexatrim, numerous reports of PPA-related stroke had been made to the FDA and knowledge of that information and the

reasons why PPA should have been removed from the marketplace were well known, or should have been known, to the Defendant. These numerous adverse reports and the ongoing Yale study, *infra*, were known, or should have been known, to the Defendant. Defendant, however, persisted in the distribution, marketing and sale of Dexatrim.

The "Yale Study"

51. In March of 1993, the FDA issued a letter to the Nonprescription Drug Manufacturers Association outlining its concerns regarding the safety of PPA and informed the industry that it intended to classify PPA as a Category III drug (insufficient data to assess safely). To avoid this classification, manufacturers of PPA Products proposed a study, which later became known as the "Yale Study", to investigate the link between PPA and hemorrhagic strokes. While the study was ongoing, the manufacturers were able to continue selling PPA products.

52. The FDA began working with manufacturers of PPA and investigators at Yale University School of Medicine to design the protocol for the Yale Study, a case-control epidemiological study to examine and quantify the risk of hemorrhagic stroke and PPA use.

53. The Yale Study, which was funded by the pharmaceutical industry, began in September 1994. It involved 702 patients and 1376 control subjects and was completed in June of 1999.

54. The Yale Study confirmed by epidemiological methodologies that the use of PPA substantially increases the risk of hemorrhagic stroke. Use of PPA in an appetite suppressant was significantly associated with the risk of hemorrhagic stroke (odds ratio of 16.58). The "first use" of any PPA product involving "cough/cold" remedies was also associated with the risk of hemorrhagic stroke (odds ratio of 3.13).

55. Defendant was provided with the final results of the Yale Study before the May 2000 meetings with the FDA. However, Defendant was aware of the existence of that ongoing epidemiological study for years prior to that date and the concerns that

existed in the medical/scientific community that PPA was associated with causing hemorrhagic strokes in human beings.

56. On November 6, 2000, the summary results of the Yale Study appeared in the popular press, including the front page of the New York Times. In a December 13, 2000, New York Times article, the FDA director of OTC drugs stated that if the Yale Study had not been undertaken, the agency probably would have decided to take PPA off the market in 1992.

57. On December 21, 2000, the study and its results were officially published as an original, lead article in the peer-reviewed New England Journal of Medicine. Its authors concluded that the Yale Study "provides strong epidemiological evidence of the association between the use of phenylpropanolamine and the risk of hemorrhagic stroke." Walter N. Kernan et al., Phenylpropanolamine and the Risk of Hemorrhagic Stroke, 343 New Eng. J. Med. 1826, 1831 (2000).

58. Read in conjunction with the large body of prior published medical case reports, FDA adverse event reports and related clinical observations, the Yale Study establishes by every conventional legal criteria and standard the "general causation" principle: PPA causes hemorrhagic strokes in human beings.

The FDA Recommends PPA be Withdrawn from the Market

59. On October 19, 2000, members of the Non-Prescription Drugs Advisory Committee for the FDA's Center for Drug Evaluation and Research met to vote, in an advisory capacity, on the safety of PPA in light of the Yale Study findings. The 15-member panel voted overwhelmingly (13 in favor) that PPA was unsafe, and recommended to the FDA the removal of PPA from the marketplace.

60. On November 6, 2000, the FDA, in reliance upon its advisory committee, and the findings of the Yale Study, officially recommended that all makers of OTC pharmaceuticals that contain PPA voluntarily remove this chemical from their products. By correspondence of the same date, the FDA urged all manufacturers and sellers of

OTC products containing PPA to cease immediately the distribution and sale of said products.

61. On the same day, the FDA's Nonprescription Drugs Advisory Committee issued the following advisory:

> Food and Drug Administration Public Health Advisory
> Subject: Safety of Phenylpropanolamine
> November 6, 2000
>
> *The Food and Drug Administration (FDA) is issuing a public health advisory concerning phenylpropanolamine hydrochloride. This drug is widely used as a nasal decongestant (in over-the-counter and prescription drug products) and for weight control (in over-the-counter drug products). FDA is taking steps to remove phenylpropanolamine from all drug products and has requested that all drug companies discontinue marketing products containing phenylpropanolamine*
>
> *Phenylpropanolamine has been marketed for many years. A recent study reported that taking phenylpropanolamine increases the risk of hemorrhagic stroke (bleeding into the brain or into tissue surrounding the brain) in women. Men may also be at risk. Although the risk of hemorrhagic stroke is very low, FDA recommends that consumers not use any products that contain phenylpropanolamine.*
>
> *FDA's Nonprescription Drugs Advisory Committee (NDAC) recently discussed this study and other information on phenylpropanolamine NDAC determined that there is an association between phenylpropanolamine and hemorrhagic stroke and recommended that phenylpropanolamine not be considered safe for over-the-counter use.*
>
> *Although this risk of hemorrhagic stroke is very low, FDA has significant concerns because of the seriousness of a stroke and the inability to predict who is at risk. FDA does not consider the conditions for which phenylpropanolamine is used (over-the-counter or by prescription) as justifying the risk of this serious event. Other products are available for use.*
>
> *In the meantime, consumers can identify over-the-counter cough-cold, nasal decongestant, and weight control products containing this ingredient by looking for "phenylpropanolamine" in the list of*

active ingredients on the label. Consumers can check with tier health provider or pharmacist to see whether their prescription cough-cold or nasal decongestant product contains phenylpropanolamine. We advise consumers to discuss alternative over-the-counter and prescription products with their health care providers or pharmacists.

62. FDA analysts, relying upon the Yale Study, estimate that 200-500 strokes occur each year in American women ages 18-49 resulting from the ingestion of PPA Products.

63. The FDA has concluded after internal and independent analysis that the Yale Study was "carefully designed, conducted with great attention to detail," and constitutes a "careful analysis." Moreover, the FDA has confirmed the major findings of the Yale Study by conducting its own analysis of the epidemiological data. The FDA has concluded that the Yale Study "strongly supports" its working hypothesis: PPA use increases the risk of hemorrhagic stroke. Indeed, the FDA has concluded that the Yale Study results largely fulfill the criteria needed to establish "causality."

Defendant's Knowledge About PPA and the Risk of Stroke

64. Defendant knew or should have known about the decades-long history of case reports in published medical literature establishing a meaningful clinical/medical association between PPA and risk of stroke; the fifty-plus adverse event reports filed with the FDA; the numerous adverse reports from the Defendant's own internal safety surveillance database, all of which related to strokes arising from PPA exposure.

65. Defendant was and is aware of the significant underreporting of adverse events associated with OTC drugs in spontaneous safety surveillance systems, such as that at the FDA, regarding PPA and strokes. The FDA has estimated that as few as 1% of all PPA-associated adverse events have been reported. Utilizing that learned estimate, the 44 FDA adverse reports of stroke associated with PPA use between 1969 and 2000

would translate into 4,400 such cases over the years in question.

66. Despite all of the foregoing knowledge, Defendant failed to timely or adequately to warn the public about the risk of suffering stroke from Dexatrim in violation of established federal regulations, including but not limited to 21 CFR § 330.10 ("Procedures for classifying OTC drugs as generally recognized as safe and effective and not misbranded, and for establishing monographs"), which under subparts (a)(4)(v), states as follows:

> *Labeling shall be clear and truthful in all respects and may not be false or misleading in any particular. It shall state the intended uses and results of the product; adequate directions for proper use; and warnings against unsafe use, side effects, and adverse reactions in such terms as to render them likely to be read and understood by the ordinary individual, including individuals of low comprehension, under customary conditions of purchase and use.*

67. Indeed, as of August, 2000, Defendant's labels for Dexatrim contained no warning at all about the risk of stroke associated with PPA.

68. The labels for Dexatrim violate 21 CFR § 369.10, which states:

> *Necessary warning statements should appear in the labeling prominently and conspicuously as compared to other words, statements, designs, and devices, and in bold type on clearly contrasting background, in order to comply with the provisions of section 502(c) and (f)(2) of the act. The warning statements should be placed in juxtaposition with the directions for use and, in any case, should appear on the label when there is sufficient label space in addition to mandatory label information.*

69. Had Defendant complied with 21 CFR § 330.10(a)(4)(v) and § 369.10, by properly warning about the risk of stroke associated with use of Dexatrim, neither Plaintiffs nor any other reasonable person would have ingested this appetite suppressant. With timely and adequate warning of the known or reasonably knowable risks, Plaintiffs

would not have taken Dexatrim containing PPA and thus would not have suffered a stroke.

70. Defendant was aware or should have been aware of the evidence linking PPA to potentially life threatening and fatal reactions.

71. In addition to studies conducted by the FDA and the scientific community, Defendant, separately and through trade organizations, engaged in collecting data and information tending to demonstrate the connection between PPA and serious adverse health affects.

72. At all material times, Defendant was a member of the Consumer Healthcare Products Association ("CHPA") (f/k/a Non-Prescription Drug Manufacturers Association ("NDMA")). A function of the CHPA is to provide information to its members concerning issues of importance to the industry. As members of the CHPA, Defendants participated in numerous communications and discussions directly related to the safety and known adverse health effects of products containing PPA.

73. In fact, the CHPA (then known as NDMA) set up a PPA Task Force whose objective was, among other things, to study the adverse effects of PPA and to address concerns of the scientific and medical communities with respect to PPA. In working to fulfill its mission, CHPA's PPA Task Force collected information from the medical and scientific communities with respect to PPA. Defendant, by and through the CHPA and the PPA Task Force, reviewed the collected medical and scientific literature regarding PPA products. As such, Defendant was fully aware of the numerous articles, treatises, reports and other evidence relating to the association between PPA and adverse health effects including stroke, heart attack, arrhythmias, and death.

74. Despite Defendant's knowledge concerning the adverse effects of PPA, Defendant continued to manufacture, market, advertise, distribute, and sell Dexatrim containing PPA products. Defendant promoted Dexatrim as safe and effective with little or no side effects. In addition, Defendant made no efforts to warn the general public of the dangers associated with products containing PPA, nor did Defendant take any steps to alert the medical community and inform them of the significant risks associated with products containing PPA.

75. To the contrary, Defendant actively engaged in downplaying and minimizing any potential adverse side effects associated with the consumption of Dexatrim containing PPA. Defendant represented to the general public and to the medical community that Dexatrim containing PPA was safe for human consumption. Defendant concealed from the general public that PPA in OTC products could cause stroke, heart attack, heart arrhythmias and death.

76. Defendant knew or should have known that the general public considered OTC medications, like Dexatrim, to be innocuous because of their ready availability without a prescription. The conception of the public relating to the safety of such OTC drugs only increased the likelihood of serious adverse health consequences associated with the consumption of PPA.

77. Defendant failed to sufficiently test Dexatrim containing PPA prior to marketing and selling it to the general public. The tests and studies performed by Defendant on Dexatrim containing PPA lacked validity in that Defendant failed to test Dexatrim containing PPA and its effects on the cardiovascular and central nervous systems over a reasonable period of time before and during the distribution and sale of

Dexatrim to the public. Nevertheless, Defendants represented Dexatrim containing PPA as pharmaceutically tested and safe for consumption, placing the general population at risk of severe adverse health effects including hemorrhagic stroke, heart attack, heart arrhythmias and death.

78. Based upon Defendant's marketing, advertising, promotion and representation of Dexatrim containing PPA as being safe and effective, Plaintiffs purchased and ingested Dexatrim. However, Dexatrim was not safe as marketed, advertised, promoted and represented by Defendant in that Defendant knew or should have known that Dexatrim containing PPA could cause stroke, heart attack, heart arrhythmias and death. Defendant failed to warn Plaintiffs of the dangers associated with ingesting Dexatrim containing PPA.

Plaintiffs Use of PPA

79. On or about April 6, 1999, Danza Honeyblue purchased Dexatrim containing PPA and took the medication as recommended to address appetite suppression.

80. Following and as a result of taking Dexatrim containing PPA, Danza Honeyblue suffered a hemorrhagic stroke on April 6, 1999.

81. Had Defendant properly disclosed the risks associated with taking Dexatrim containing PPA, Danza Honeyblue would not have taken Dexatrim.

82. On or about December 19, 2000, Jon Park purchased Dexatrim containing PPA and took the medication as recommended to address appetite suppression.

83. Following and as a result of taking Dexatrim containing PPA, Jon Park suffered a ischemic stroke on December 19, 2000.

84. Had Defendant properly disclosed the risks associated with taking Dexatrim containing PPA, Jon Park would not have taken Dexatrim.

FIRST CLAIM FOR RELIEF
NEGLIGENCE

85. The foregoing paragraphs of this Complaint are realleged and incorporated by reference.

86. Defendant had a duty to exercise reasonable care in the warning about, design, testing, labeling, manufacture, marketing, sale, and/or distribution of Dexatrim, including a duty to ensure that Dexatrim did not cause users to suffer from unreasonable, unknown, and/or dangerous side effects.

87. Defendant failed to exercise reasonable care in the warning about, designing, testing, labeling, manufacture, marketing, sale, and/or distribution of Dexatrim, in that Defendant knew or should have known that taking Dexatrim caused unreasonable and dangerous injuries, including stroke, heart attack, heart arrhythmia, and death.

88. Defendant breached its duty and was negligent in its actions, misrepresentations, and omissions toward Plaintiffs, in part, in the following ways:

a. Failed to exercise due care in designing, developing, and manufacturing Dexatrim so as to avoid the aforementioned risks to individuals using these products;

b. Failed to include adequate warnings with Dexatrim that would alert Plaintiffs and other consumers to its potential risks and serious side effects;

c. Failed to adequately and properly test Dexatrim before placing it on the market;

d. Failed to conduct sufficient testing on Dexatrim, which if properly performed, would have shown that Dexatrim containing PPA had serious side effects, including, but not limited to, stroke, heart attack, and death;

e. Failed to adequately warn Plaintiffs that use of Dexatrim carried a risk of disability and death due to stroke and other serious side effects;

f. Failed to provide adequate post-marketing warnings or instructions after Defendant knew, or should have known, of the significant risks of stroke from the use of PPA products, including Dexatrim;

g. Failed to adequately warn Plaintiffs that Dexatrim should not be used in conjunction with other PPA products or with other stimulants such as caffeine.

h. Placed an unsafe product into the stream of commerce; and

i. Was otherwise careless or negligent.

89. Defendant knew, or should have known, that Dexatrim containing PPA caused unreasonably dangerous risks and serious side effects of which Plaintiffs would not be aware. Defendant nevertheless advertised, marketed, sold and/or distributed Dexatrim knowing that there were safer methods and products to address appetite suppression.

90. Defendant knew or should have known that consumers such as Plaintiffs would suffer injury as a result of Defendant's failure to exercise reasonable care as described above.

91. Upon information and belief, Defendant knew or should have known of the defective nature of Dexatrim, as set forth herein, but continued to design,

manufacture, market, and sell Dexatrim so as to maximize sales and profits at the expense of the health and safety of the public, including Plaintiffs, in conscious and/or negligent disregard of the foreseeable harm caused by Dexatrim.

92. Defendant failed to disclose to the Plaintiffs and the general public facts known or available to it, as alleged herein, in order to ensure continued and increased sales of Dexatrim. This failure to disclose deprived Plaintiffs of the information necessary for them to weigh the true risks of taking Dexatrim against the benefits.

93. In addition to failing to disclose the potentially lethal side effects of Dexatrim, Defendant delayed withdrawing Dexatrim from the market until the official recommendation of the FDA on November 6, 2000 in order to ensure continued and increased sales of Dexatrim.

94. As a direct and proximate result of Defendant's negligence as described herein, Plaintiffs have sustained harm, including permanent and debilitating injuries. These injuries have caused, and will continue to cause, extensive pain and suffering and severe emotional distress, and have substantially reduced Plaintiffs' ability to enjoy life; and have caused, and will continue to cause, Plaintiffs to expend substantial sums of money for medical, hospital, and related care, all to Plaintiffs' general damage.

95. As a direct and proximate result of Defendant's negligence as described herein, Plaintiffs have incurred expenses for reasonable and necessary health care treatment and services. Upon information and belief, Plaintiffs will be required to obtain medical and/or hospital care, attention, and services in an amount as yet unascertained.

SECOND CLAIM FOR RELIEF
GROSS NEGLIGENCE

96. The foregoing paragraphs of this Complaint are realleged and incorporated by reference.

97. Defendant has a duty to exercise reasonable care in the warning about, design, testing, manufacture, marketing, labeling, sale, and/or distribution of its PPA products, including a duty to ensure that Dexatrim did not cause users to suffer from unreasonable and dangerous side effects.

98. Defendant failed to exercise reasonable care in the warning about, design, testing, manufacture, marketing, labeling, sale, and/or distribution of Dexatrim, in that Defendant knew or should have known that taking Dexatrim caused unreasonable and life-threatening injuries, as alleged herein.

99. Defendant was grossly negligent in the warning about, design, testing, manufacture, marketing, labeling, sale, and/or distribution of Dexatrim in that it:

a. failed to provide adequate warnings with Dexatrim regarding its possible risks and adverse effects as well as the comparative severity and duration of such adverse effects;

b. failed to exercise due care in designing, developing, and manufacturing Dexatrim so as to avoid the aforementioned risks to individuals using the medicine;

c. failed to advise the FDA and the public of material facts regarding the safety of PPA products, such as Dexatrim;

d. placed unsafe product into the stream of commerce; and

e. was otherwise grossly negligent.

100. Although Defendant knew, or recklessly disregarded, the fact that PPA products caused potentially lethal side effects, Defendant continued to market Dexatrim to consumers, including Plaintiffs, without disclosing these side effects when there were safer alternative medicines to treat cough and cold symptoms.

101. Defendant knew and/or consciously or recklessly disregarded the fact that consumers such as Plaintiffs would suffer injury as a result of Defendant's failure to exercise reasonable care as described above.

102. Defendant knew of, or recklessly disregarded the defective nature of Dexatrim, as set forth herein, but continued to design, manufacture, market, and sell Dexatrim so as to maximize sales and profits at the expense of the health and safety of the public, including Plaintiffs, in conscious and/or reckless disregard of the foreseeable harm caused by PPA products such as Dexatrim.

103. Defendant delayed providing warnings about the dangerous side effects of Dexatrim — and then failed to provide adequate warnings — which would have dissuaded consumers, including Plaintiffs, from purchasing and using Dexatrim to address appetite suppression.

104. As a direct and proximate result of the gross negligence, willful and wanton misconduct, or other wrongdoing and actions of Defendant described herein, which constitute a deliberate act or omission with knowledge of a high degree probability of harm and reckless indifference to the consequences, Plaintiffs have sustained harm, including permanent and debilitating injuries. These injuries have caused, and will continue to cause, extensive pain and suffering and severe emotional distress, and have substantially reduced Plaintiffs' ability to enjoy life; and may in the future cause

Plaintiffs to expend substantial sums of money for medical, hospital, and related care, all to Plaintiffs' general damage.

105. As a direct and proximate result of the gross negligence, willful and wanton misconduct, or other wrongdoing and actions of Defendant described herein, which constitute a deliberate act or omission with knowledge of a high degree probability of harm and reckless indifference to the consequences, Plaintiffs have been injured in health, strength, and activity and has suffered physical injuries as well as mental anguish. In addition, Plaintiffs have been rendered sick, sore, lame, and disabled, both internally and externally. All of said injuries have caused and continue to cause Plaintiffs intense anxiety, distress, fear, pain, suffering, and distress secondary to the physical injury and damages. In addition, Plaintiffs have suffered other injuries; the exact nature and extent are not known at this time.

106. As a direct and proximate result of the gross negligence, willful and wanton misconduct, or other wrongdoing and actions of Defendant, which constitute a deliberate act or omission with knowledge of a high degree probability of harm and reckless indifference to the consequences, Plaintiffs will in the future be required to obtain medical and/or hospital care, attention, and services. As a result, Plaintiffs may incur expenses for such health care treatment in an amount as yet unascertained.

107. Defendant's aforementioned conduct was committed with knowing, conscious, and/or deliberate disregard for the rights and safety of consumers such as Plaintiffs, thereby entitling Plaintiffs to punitive damages in an amount appropriate to punish Defendant and deter it from similar conduct in the future. Defendant continued to promote the efficacy and safety of Dexatrim, while providing little or no warnings, and

downplaying any risks, even after Defendant knew of the risks and injuries associated with their use.

THIRD CLAIM FOR RELIEF
STRICT PRODUCT LIABILITY - FAILURE TO WARN

108. The foregoing paragraphs of this Complaint are realleged and incorporated by reference.

109. Defendant manufactured, marketed, distributed, and supplied Dexatrim. As such, it had a duty to warn the public of the health risks associated with using Dexatrim.

110. Dexatrim was under the exclusive control of Defendant, and was sold without adequate warnings regarding the risk of stroke, heart attack, heart arrhythmia and death associated with its use.

111. As a direct and proximate result of the defective condition of Dexatrim, as manufactured and/or supplied by Defendant, and as a direct and proximate result of negligence, gross negligence, willful and wanton misconduct, or other wrongdoing and actions of Defendant described herein, Plaintiffs have suffered, and will continue to suffer injury, harm, and economic loss as previously alleged.

112. Upon information and belief, Defendant knew of the defective nature of Dexatrim but continued to design, manufacture, market, and sell it so as to maximize sales and profits at the expense of the public health and safety, in knowing, conscious, and deliberate disregard of the foreseeable harm caused by Dexatrim and in violation of its duty to provide an accurate, adequate, and complete warning concerning the use of Dexatrim.

113. Defendant's conduct in the packaging, warning, marketing, advertising, promotion, distribution, and sale of Dexatrim, was committed with knowing, conscious, and deliberate disregard for the rights and safety of consumers such as Plaintiffs, thereby entitling Plaintiffs to punitive damages in an amount to be determined at trial that is appropriate to punish Defendant and deter it from similar conduct in the future.

114. The foregoing misconduct is in violation of N.J.S.A. 2A:58C-2 *et seq.* (New Jersey Products Liability Act) and all other similar acts applicable in jurisdictions within the United States. Plaintiffs and Class Members seek all remedies available under such acts.

FOURTH CLAIM FOR RELIEF
STRICT PRODUCT LIABILITY – DEFECTIVE IN DESIGN OR MANUFACTURE

115. The foregoing paragraphs of this Complaint are realleged and incorporated by reference.

116. Defendant is the manufacturer, seller, distributor, marketer, and/or supplier of Dexatrim, which is defective and unreasonably dangerous to consumers.

117. Dexatrim was sold, distributed, supplied, manufactured, marketed, and/or promoted by Defendant, and was expected to reach and did reach consumers without substantial change in the condition in which they were manufactured and sold by Defendant.

118. Dexatrim was defective in its design and unreasonably dangerous in that their foreseeable risks exceeded the benefits associated with its design or formulation.

119. Alternatively, Dexatrim was defective in design or formulation in that its use posed a greater likelihood of injury than other alternative treatments for appetite

suppression and was more dangerous than an ordinary consumer could reasonably expect or foresee.

120. Upon information and belief, Defendant actually knew of the defective nature of Dexatrim but continued to design, manufacture, market, and sell it so as to maximize sales and profits at the expense of the public health and safety, in conscious disregard of the foreseeable harm caused by Dexatrim.

121. There were safer alternative methods and designs for over-the-counter appetite suppressants.

122. As a direct and proximate result of the design and manufacturing defects of Dexatrim, Plaintiffs suffered, and will continue to suffer, injury, harm, and economic loss as previously alleged herein.

123. Defendant's aforementioned conduct was committed with knowing, conscious, and deliberate disregard for the rights and safety of consumers such as Plaintiffs, thereby entitling Plaintiffs to punitive damages in an amount to be determined at trial that is appropriate to punish Defendant and deter it from similar conduct in the future.

124. The foregoing misconduct is in violation of N.J.S.A. 2A:58C-2 *et seq.* (New Jersey Products Liability Act) and all other similar acts applicable in jurisdictions within the United States. Plaintiffs and Class Members seek all remedies available under such acts.

FIFTH CLAIM FOR RELIEF
VIOLATIONS OF APPLICABLE CONSUMER FRAUD ACTS

125. Plaintiffs repeat and incorporate by reference each and every allegation set forth above as if alleged in full herein.

126. Over the counter medications, such as Dexatrim are "merchandise," as that term is defined by N.J.S.A. 56:8-1 *et. seq.* (New Jersey Consumer Fraud Act), and all other similar acts applicable in jurisdictions within the United States.

127. Defendant Chattem is the researcher, developer, designer, tester, manufacturer, inspector, labeler, distributor, marketer, promoter, seller and/or otherwise released Dexatrim, containing PPA, into the stream of commerce.

128. Defendant knew of should have known that the use of Dexatrim containing PPA causes serious and life threatening injuries but failed to warn the public, including Plaintiffs and Class Members of same.

129. In violation of the Act(s), Defendant made untrue, deceptive or misleading representations of material facts to and omitted and/or concealed material facts from Plaintiffs in product packaging, labeling, medical advertising, direct-to-consumer advertising, promotional campaigns and materials, among other ways, regarding the safety and use of Dexatrim. Moreover, Defendant downplayed and/or understated the serious nature of the risks associated with Dexatrim in order to increase the sales of Dexatrim and secure a greater share of the appetite suppressant and diet pill market.

130. Defendant's statements and omissions were undertaken with the intent that the FDA, physicians, and consumers, including the Plaintiffs and Class Members, would rely on the Defendant's statements and/or omissions.

131. Defendant knew of the growing public acceptance of the misinformation and misrepresentations regarding the safety and efficacy of Dexatrim containing PPA but remained silent because Chattem's appetite for significant future profits far outweighed its concern for the health and safety of the Plaintiff(s).

132. Plaintiffs consumed Dexatrim containing PPA, primarily for personal and family reasons and suffered ascertainable losses of money as a result of the Defendant's use or employment of the methods, acts, or practices alleged herein.

133. The aforesaid promotion and release of Dexatrim containing PPA into the stream of commerce constitutes an unconscionable commercial practice, deception, false pretense, misrepresentations, and/or the knowing concealment, suppression, or omission of material facts with the intent that others would rely upon such concealment, suppression or omission in connection with the sale or advertisement of such merchandise or services by Defendant, in violation of the New Jersey Consumer Fraud Act., N.J.S.A. 56:8-1 *et seq.*, and all other similar acts applicable in jurisdictions within the United States.

134. Defendant Chattem concealed, omitted, or minimized the side effects of Dexatrim or provided misinformation about adverse reactions, risks and potential harms from Dexatrim and succeeded in persuading consumers to purchase and ingest Dexatrim despite the lack of safety and the risk of adverse medical reactions.

135. Defendant's practice of promoting and marketing Dexatrim created and reinforced a false impression as to the safety of Dexatrim, thereby placing consumers at risk of serious and potential lethal effects.

136. Dexatrim lacked appropriate warnings, and the packaging and labels used by Defendant were misleading, inaccurate, incomplete, and/or untimely.

137. Defendant violated its post-manufacture duty to warn which arose when Chattem knew, or with reasonable care should have known, that Dexatrim was injurious and sometimes fatal.

138. At the time when consumers purchased and ingested Dexatrim, Defendant intended that others would rely upon the concealment, suppression or omission of the risks of ingesting Dexatrim.

139. Defendant's actions in connection with manufacturing, distributing, and marketing of Dexatrim as set forth herein evidence a lack of good faith, honesty in fact and observance of fair dealing so as to constitute unconscionable commercial practices, in violation of the New Jersey Consumer Fraud Act, N.J.S.A, 56:8-2 *et seq.*, and all other similar acts applicable in jurisdictions within the United States.

140. Defendant Chattem acted willfully, knowingly, intentionally, unconscionably and with reckless indifference when committing these acts of consumer fraud.

141. As a proximate result of the acts of consumer fraud set forth above, Plaintiffs have purchased an unsafe product and incurred monetary expense and the risk to themselves and members of their household that they would consume Dexatrim and thereby suffer an increased risk of harm as previously set forth herein.

142. The foregoing misconduct is in violation of N.J.S.A, 56:8-2 *et seq.* (New Jersey Consumer Fraud Act) and all other similar acts applicable in jurisdictions within the United States. Plaintiffs and Class Members seek all remedies available under such acts, including but not limited to compensatory, treble and punitive damages, together with interest, costs of suit, and attorneys' fees.

SIXTH CLAIM FOR RELIEF
BREACH OF IMPLIED AND EXPRESS WARRANTY

143. The foregoing paragraphs of this Complaint are realleged and incorporated by reference.

144. Defendant manufactured, marketed, sold, and distributed Dexatrim specifically for the purpose of appetite suppression.

145. At the time Defendant marketed, sold, and distributed Dexatrim for use by Plaintiffs, Defendant knew of the purpose for which Dexatrim was intended and impliedly and expressly warranted Dexatrim to be of merchantable quality and safe and fit for such use.

146. Plaintiffs reasonably relied on the skill, superior knowledge, and judgment of Defendant as to whether Dexatrim was of merchantable quality and safe and fit for its intended use.

147. Plaintiffs purchased and used Dexatrim for the purpose of appetite suppression.

148. Due to Defendant's wrongful conduct as alleged herein, Plaintiffs could not have known about the risks and side effects associated with Dexatrim until after Plaintiffs ingested it.

149. Contrary to such implied and express warranties, Dexatrim was not of merchantable quality and were not safe or fit for their intended use.

150. As a direct and proximate result of Defendant's breach of implied and express warranties, Plaintiffs have suffered, and will continue to suffer, injury, harm, and economic loss, as previously alleged herein.

151. Defendant's aforementioned conduct was committed with knowing, conscious, and deliberate disregard for the rights and safety of consumers such as Plaintiffs, thereby entitling Plaintiffs to punitive damages in an amount to be determined

at trial that is appropriate to punish Defendant and deter it from similar conduct in the future.

SEVENTH CLAIM FOR RELIEF
COMMON LAW FRAUD

152. Plaintiffs incorporate by reference each and every allegation set forth above as if alleged in full herein.

153. At all material times, Defendant was engaged in the business of distributing, promoting, and selling Dexatrim containing PPA.

154. Defendant made misrepresentations of material facts to, and omitted and/or concealed material facts from, Plaintiffs in the advertising, marketing, distribution and sale of Dexatrim regarding its safety and use.

155. Defendant deliberately and intentionally misrepresented to, and omitted and/or concealed material facts from, consumers, including Plaintiffs, that Dexatrim was safe when used as intended for appetite suppression. Such misrepresentations, omissions, and concealments of facts include, but are not limited to:

a. Failing to disclose, and/or intentionally concealing, the results of tests showing the potential risks of hypertension, heart attack, stroke and other injuries associated with the use of PPA products such as Dexatrim;

b. Failing to include adequate warnings with Dexatrim about the potential and actual risks and the nature, scope, severity, and duration of serious adverse effects of Dexatrim;

c. Concealing and/or providing false or inaccurate information regarding the known risks of stroke, heart attack, heart arrhythmia and death associated with PPA products such as Dexatrim; and

d. Concealing the known incidents of stroke, heart attack, heart arrhythmia and death, as previously alleged herein.

156. Defendant intentionally concealed facts known to it, as alleged herein, in order to ensure increased sales of Dexatrim.

157. Defendant had a duty to disclose the foregoing risks and failed to do so, despite possession of information concerning those risks. Defendant's representations that Dexatrim was safe for its intended purpose were false, as Dexatrim was, in fact, dangerous to the health of Plaintiffs when used for appetite suppression, and there were alternative, effective, and safe treatments available to Plaintiffs. Moreover, Defendant knew that its statements were false, knew of incidents of serious injuries, such as stroke, heart attack, heart arrhythmia, and death associated with the use of PPA products, and knew that its omissions rendered their statements false or misleading.

158. In the alternative, Defendant failed to exercise reasonable care in ascertaining the accuracy of the information regarding the safe use of PPA products, and failed to disclose that Dexatrim containing PPA caused stroke, heart attack, heart arrhythmia and death, among other serious adverse effects. Defendant also failed to exercise reasonable care in communicating the information concerning Dexatrim to Plaintiffs, and/or concealed facts that were known to Defendant.

159. Plaintiffs were not aware of the falsity of the foregoing representations, nor were Plaintiffs aware that material facts concerning the safety of Dexatrim had been concealed or omitted. In reliance upon Defendant's misrepresentations (and the absence of disclosure of the serious health risks), Plaintiffs purchased and ingested Dexatrim.

Had Plaintiffs known the true facts concerning the risks associated with Dexatrim, they would not have taken the drug.

160. The reliance by Plaintiffs upon Defendant's misrepresentations was justified because said misrepresentations and omissions were made by individuals and entities that were in a position to know the true facts concerning Dexatrim. Plaintiffs were not in a position to know the true facts, because Defendant aggressively promoted the use of Dexatrim and concealed the risks associated with its use, thereby inducing Plaintiffs to use Dexatrim for appetite suppression rather than alternative, safer treatments.

161. As a direct and proximate result of Defendant's misrepresentations, and/or concealment, Plaintiffs have suffered, and will continue to suffer, injury, harm, and economic loss as previously alleged herein.

162. Defendant's conduct in concealing material facts and making the foregoing misrepresentations, as alleged herein, was committed with conscious or reckless disregard of the rights and safety of consumers such as Plaintiffs, thereby entitling Plaintiffs to punitive damages in an amount to be determined at trial that is appropriate to punish Defendant and deter it from similar conduct in the future.

EIGHTH CLAIM FOR RELIEF
LOSS OF CONSORTIUM

163. Plaintiffs incorporate by reference each and every allegation set forth above as if alleged in full herein.

164. Plaintiffs and Class Members are and at all relevant times have been in familial relationships, and as such are entitled to the comfort and enjoyment of the society and services of their respective family members.

165. Plaintiffs' and Class Members' family members (e.g., mother, father, spouse, children) have necessarily paid and have become liable to pay for medical aid, treatment and for medications, and will necessarily incur further expenses of a similar nature in the future.

166. As a direct and proximate cause of the foregoing misconduct of the Defendant, Plaintiffs and Class Members have been deprived of the companionship, services, solace, consortium, affection, and/or attention of their family members, to which they are entitled.

167. As a result of all of the foregoing, Plaintiffs and Class Members and their family members have been and will continue to be injured and damaged.

WHEREFORE, Plaintiffs pray for relief as follows:

a. Awarding actual damages to Plaintiffs incidental to their purchase and ingestion of Dexatrim in an amount to be determined at trial;

b. Awarding treble and/or punitive damages to Plaintiffs;

c. Awarding pre-judgment and post-judgment interest to Plaintiffs;

d. Awarding the costs and expenses of this litigation to Plaintiffs;

e. Awarding reasonable attorneys' fees and costs to Plaintiffs as provided by law; and

f. For such further relief as this Court deems necessary, just, and proper.

JURY DEMAND

Plaintiffs demand a trial by jury on all issues so triable.

Dated: April ___, 2004

SEEGER WEISS LLP

By: _____
Christopher A. Seeger
Stephen A. Weiss
One William Street
New York, New York 10004
(212) 584-0700

ASHCRAFT & GEREL

By: _____
James F. Green
Michael W. Heaviside

EARLY, LUDWICK & SWEENEY, LLC

By: _____
Ron Michael Meneo

LOPEZ, HODES, RESTAINO, MILMAN & SKIKOS

By: _____
Ramon Rossi Lopez

Attorneys for Plaintiffs and Class Members